IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No. 167 of 2005
In
COMPANY PETITION No. 127 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT MAZDOOR SABHA - Applicant(s)
Versus
O.L.OF NEEKA TUBES LTD. & 3 - Respondent(s)

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Appearance :
MR MUKUL SINHA for Applicant(s) : 1,
OFFICIAL LIQUIDATOR for Respondent(s) : 1,
MR MRUGESH JANI for Respondent(s) : 1,
MS NALINI S LODHA for Respondent(s) : 2,
NOTICE SERVED for Respondent(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 26/09/2006

ORAL JUDGMENT

By way of this Judges summons/application, the applicant, Gujarat Mazdoor Sabha has prayed for an

appropriate order directing the Official Liquidator of M/s Neeka Tubes Limited (in liquidation) to disburse an amount of Rs.4,50,00,000/- amongst the ex-workers of the company in liquidation out of the amount realized from the sale of plant and machinery and land and building.

2. It is the case on behalf of the applicant that they have submitted respective claims of the ex-workers of M/s Neeka Tubes Limited before the Official Liquidator and the same has been verified through the Chartered Accountant and that the Official Liquidator has realized the amount by selling the properties of the company in liquidation. It is the contention on behalf of the applicant that they have already lodged the claim for dues receivable from the company in liquidation with regard to unpaid wages, bonus, Leave encashment, retrenchment compensation, gratuity, PF etc. with the Official Liquidator in respect of 160 workmen employed in the factory and 58 workmen employed as office staff and the total claim works out to Rs.5,19,19,408/- and therefore, it is requested to grant the relief as prayed for.

3. The Official Liquidator of the company in liquidation has submitted its report dated 11th July,

2006. It is submitted in the report that the Official Liquidator sold the plant and machinery for Rs.90 lacs vide this Court's order dated 9th April, 2003 passed in OLR No.2 of 2003 and thereafter, the Official Liquidator sold the land and building structure, except records for Rs.3.60 crores by order of this Court dated 24-3-2005 passed in OLR No.20 of 2005. It is also further submitted that the Bank of Baroda has also submitted their claims as a secured creditor. It is also further submitted by the Official Liquidator in the report that in absence of the claims submitted by the other financial institutions, the claims of secured creditor are not still verified and scrutinized. It is also further submitted in the report that the claim of the respective workers are verified through the Chartered Accountant and according to the Chartered Accountant, on verification, the claims of the ex-workers would be Rs.4,88,53,773/-. It is submitted by the Official Liquidator that as on 30-1-2006, the Official Liquidator is having Rs.4,59,45,878.86paisa, out of which Rs.6,78,900/- and Rs.3,39,850/- are to be deducted by the Official Liquidator by way of Central Government fees under Rule 291(2) and Rule 291(4) of the Company Court Rule, 1959. It is submitted that after deducting the aforesaid amount and other expenses, the funds available with the Official Liquidator is

Rs.4,32,66,929/- in the company's account. Therefore, it is requested to pass appropriate order.

4. The application is opposed by the learned advocate appearing for Bank of Baroda, the secured creditor. It is submitted that they have already submitted their claim. However, the same is yet not verified by the Official Liquidator. It is also further submitted that even the workers' claims are required to reverified by the Chartered Accountant in light of the observations made by this Court (Coram: K.A. Puj, J.) in its order dated 9-1-2006 passed in Company Application No.362 of 2004 and other cognate matters, more particularly, para 30 of the same and it is submitted that unless the claims are reverified by the Chartered Accountant, no payment are made to the workers, otherwise it will be very difficult to get the amount back from the concerned workmen once the payment is made.

5. Considering the facts as stated above, it is true that the Chartered Accountant is required to reverify the claims of the respective workers in light of the observations made by this Court in para 30 of the order dated 9-1-2006 passed in Company Application No.362 of 2004 and other cognate matters. Para 30 of the said order

reads as under:

> *Earlier, the Court has passed an order for distribution of the sale proceeds in the ratio of 40% to 60% on ad hoc basis. Thereafter, number of objections have been raised. Only 4 crores have been distributed. The remaining amount is still lying with the Official Liquidator. Before any order of disbursement is passed, the ratio is correctly required to be worked out. In this connection, serious objections are raised on behalf of the secured creditors. It is stated in the affidavit filed on behalf of Bank of Baroda that the claim of the applicant – union is excessive and inflated and includes the items which are inadmissible in law and in view of the guidelines laid down by this Court in the case of Textile Labour Association V/s. Official Liquidator of Jubilee Mills Ltd. (in liquidation). It is further stated that the Chartered Accountant, while rightly disallowing certain items like bonus, notice pay and HRA, left certain aspects to be determined by the Official Liquidator who has yet to offer his comments thereon. The Chartered Accountant has computed the claim of the workmen upto the date of winding up and not upto the date of the closure of the company which is not correct in the facts of the present case. The claims of the workmen drawing basic pay above Rs. 2,000/- have also been considered while verifying the claim. It is also necessary to remove the claims of the casual workers while computing the claim of the workmen. Without ascertaining the date of birth of the workmen, the claims of workmen have been verified as if it is not possible to know the age of super-annuation without knowing the date of birth. In absence of the affidavit of each workmen disclosing*

their date of birth and other lacuna, the report of the Chartered Accountant pertaining to the assessment of the workmen's claim cannot be accepted and directions are required to be issued to the Official Liquidator to get the claim of the workmen re-verified taking into account all these aspects.

6. However, considering the fund position available, it will be appropriate at this stage to disburse some amount amongst the ex-workers of the company in liquidation to the extent of Rs.1 crore only on absolutely *ad hoc* basis without prejudice to the rights and contentions of the secured creditors with regard to entitlement of any amount to the respective workers and subject to re-verification of the claims of the respective workers by the Chartered Accountant pursuant to the order passed by this Court dated 9-1-2006 passed in Company Application No.362 of 2004 and other cognate matters and subject to the verification of the claims of the respective secured creditors.

7. Under the circumstances, the Official Liquidator is permitted to disburse/pay an amount of Rs.1 crore to the respective workers by Account Pay Cheque in equal proportion on proper identification by the representative of the applicant on absolutely *ad hoc* basis and subject to re-verification of the claims of the respective

workers by the Chartered Accountant in light of the observations made by this Court in its order dated 9-1-2006 passed in Company Application No.362 of 2004 and other cognate matters and subject to verification of the claims of the secured creditors and deciding the percentage ratio amongst the workers and secured creditors. It will be open for the Official Liquidator to pre-maturely withdraw/encash the fixed deposit and to open dividend account for the purpose of making the aforesaid payment. The aforesaid exercise be done on or before 18th October, 2006.

8. The Official Liquidator is directed to get reverified claims of each worker as per the directions/ observations of this Court in its order dated 9-1-2006 passed in Company Application No.362 of 2004 and other cognate matters, more particularly, para 30 which is reproduced hereinabove and the Official Liquidator is further directed to consider the said report and reverify the claims of each worker and submit the report before this Court, so that further order can be passed. It will be open for the secured creditors to submit their objections against the claims of respective workers, to the Official Liquidator within a period of three weeks from today, so that the same can be sent to the Chartered

Accountant to consider the same at the time of re-verification of the claim.

9. If any of the secured creditors have not submitted their claims for the purpose of verification, the secured creditors may send their claim for verification within a period of four weeks from today and the Official Liquidator is directed to consider and verify the claims of the secured creditors also, within a period of two months thereafter.

It is however, made clear that the aforesaid payment to the respective workers would be absolutely on *ad hoc* basis and without prejudice to their rights and contentions of respective secured creditors, and by which it may not be construed that this Court has accepted the claims of the respective workers in Toto and the aforesaid payment is subject to the re-verification of the claims by the Chartered Accountant as stated above.

10. With these, the present application is disposed off.

(M.R.SHAH,J.)

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